

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Renewal of)
Temporary Urgency Permit 16843)
Issued on Application 25132)
of)

Decision 1465

MAMMOTH COUNTY WATER DISTRICT)

to Appropriate from Lake Mary)
in Mono County.)

DECISION AND ORDER RENEWING
TEMPORARY PERMIT TO APPROPRIATE WATER

BY THE BOARD:

NATURE OF PROCEEDINGS

Past Proceedings

On August 19, 1976, Mammoth County Water District (permittee) filed Application 25132 for a temporary permit to appropriate unappropriated water pursuant to Chapter 6.5, Part 2, Division 2 of the Water Code. Objections were received and a public hearing was held before State Water Resources Control Board (Board) Member Dodson on October 6, 1976, pursuant to Board Resolution No. 76-82. Permittee and objectors appeared and presented evidence; Board Member Dodson concluded from the evidence that the permittee was entitled to a temporary permit to appropriate water subject to review and validation by the Board as provided by Water Code Section 1425. After duly considering the evidence received at the hearing, the Board adopted Decision 1461 which approved Application 25132 and

which authorized the issuance of a temporary permit, subject to a number of limitations and conditions.

Present Proceedings

By a letter dated March 3, 1977, counsel for permittee requested that the temporary permit issued pursuant to Decision 1461 be renewed for a period of 180 days from March 14, 1977, and that other dates in the Board's order and permit be appropriately changed. Permittee did not request any other modification of Decision 1461 or the temporary permit. The following findings in Decision 1461 are unchanged and are incorporated herein; findings 1 through 3:

"Substance of the Application

"1. Application 25132 is for a temporary permit to appropriate two cubic feet per second (cfs) by direct diversion from September 15, 1976, through March 14, 1977, for domestic and municipal purposes from Lake Mary in Mono County. The point of diversion is to be located within the NW1/4 of NW1/4 of Section 16, T4S, R27E, MDB&M.

"Applicant's Project

"2. The applicant is the primary purveyor of domestic water for the community of Mammoth Lakes which is situated on the eastern slope of the Sierra Nevada mountains approximately 44 miles north of Bishop, at an elevation of approximately 9,000 feet. There are approximately 3,500 permanent residents and an average of another 4,000 transients within the District (RT 88, 89).

"3. The applicant's principal source of water is Lake Mary, a natural lake on Mammoth Creek. The capacity of the lake has been increased to approximately 120 million gallons by the erection of a structure on the Creek (RT 35). The structure is equipped with a gate and water is released down Mammoth Creek through lower Lake Mamie and to the applicant's diversion works further downstream (RT 17). The project is being operated under an agreement with the U. S. Forest Service which owns the land and is covered by Licenses 1214 (Application 4920) and 5715 (Application 12079) and Permit 11463 (Application 17770). The subject application (Application 25132) was filed to obtain a right to water in Lake Mary which is not presently physically available to the applicant due to the elevation of the outlet gate. The applicant proposes to install a 12-inch siphon which will enable it to place water into the Creek when the level of Lake Mary drops below the outlet structure (RT 12). The siphon will have a valve to control the rate of flow downstream (RT 18). By the use of the siphon the applicant will be able to draw an additional 100 million gallons of water from Lake Mary (RT 38)."

Disposition of Objections

4. Application 25132 was protested by the Department of Fish and Game, University of California, Hot Creek Ranch, Inc., Crystal Gray Water and Development Association and Richard Rabe. All of these objections to the issuance of a temporary permit were withdrawn or otherwise resolved in the prior proceedings.

5. Notice of the application to renew this temporary permit has not been published or posted and therefore no person has had the opportunity formally to object to the renewal of the permit. However, the Department of Fish and Game, University of California, and Crystal Crag Water and Development Association have been consulted and have no objection at this time to the renewal of the temporary permit. Hot Creek Ranch, Inc., was not consulted because the limitations contained in Decision 1461 and the temporary permit which protect downstream users would be retained in the renewed permit. Richard Rabe was not contacted because he did not appear at the previous hearing in support of his initial objection.

6. The U. S. Forest Service, on whose land the applicant has constructed diversion works under temporary permit 16843 under a cooperative agreement dated July 13, 1976, has also been consulted. The U. S. Forest Service has objected to a renewal of said permit for the period after May 1 because the applicant has not renegotiated their cooperative agreement, and to the diversion of water from dead storage from Lake Mary during the tourist season. These objections have not yet been resolved.

Existence of Unappropriated Water

7. Decision 1461 found that unappropriated water is available, that, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water and that the

intended use is beneficial. The record available at this time indicates that these findings remain correct through April 30, 1977.

The Permittee Has an Urgent and Temporary Need to Appropriate Water

8. Decision 1461 found that permittee had an urgent and temporary need for water and the record available at this time indicates that this finding remains correct. In addition, the record indicates that while permittee has not used any water under the temporary permit, it is likely that such use may be needed before the summer is over and that the situation otherwise remains the same. The U. S. Forest Service in a telephone contact alleged that permittee has wells where it could receive almost an equal amount of water and that, therefore, permittee does not need to appropriate water from Lake Mary to satisfy its temporary and urgent need for water. This objection has not been resolved.

CONCLUSION

From the foregoing findings, the Board concludes that the temporary permit should be renewed nunc pro tunc, that such renewal should be issued subject to the limitations and conditions set forth in the order following, that notice of the permit should be published or posted in accordance with Water Code

Section 1428, and that following such notice a Board hearing should be held to receive evidence which will allow the Board to reconsider at a Board meeting each of the findings required by Chapter 6.5, Part 2, Division 2 of the Water Code.

ORDER

IT IS HEREBY ORDERED that temporary Permit 16843 be renewed subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed two cubic feet per second by direct diversion from March 15, 1977, through September 11, 1977; provided, however, that the period of diversion shall be March 15, 1977, through April 30, 1977, unless before May 1, 1977, a Board hearing has been held and a Board decision adopted confirming the required statutory findings and finding that continuance of the temporary permit would best conserve the public interest, except that a hearing need not be held if, following notice pursuant to Water Code Section 1428, no objection to this renewal is filed or if any objection so filed is resolved.

2. The diversion works installed pursuant to this permit shall be removed as soon as conditions allow after the period of authorized diversion, but no later than ninety days following such period.

3. Permittee shall notify the Board in writing that the diversion works have been removed within two weeks of their removal.

4. The total quantity of water diverted under this permit, together with that diverted under Permit 11463 issued pursuant to Application 17770, shall not exceed two cubic feet per second.

5. The maximum amount diverted under this temporary permit shall not exceed 700 acre-feet. Permittee shall submit a report on or before October 31, 1977, showing the quantities of water diverted by months under this permit.

6. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces;

(4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

7. The quantity of water diverted under this permit is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

8. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

9. No water shall be diverted under this permit until permittee has installed in the diversion pipeline devices, satisfactory to the State Water Resources Control Board, which are capable of measuring, restricting and controlling the flows diverted.

10. In accordance with the requirements of Fish and Game Code Section 5946, this permit is conditioned upon full compliance with Section 5937 of the Fish and Game Code.

11. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Lahontan Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board.

A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

1. The Regional Board issues a waiver pursuant to Section 13269, or

2. The Regional Board fails to act within 120 days of the filing of the report.

No report of waste discharge pursuant to Section 13260 of the Water Code shall be required for percolation to the groundwater of water resulting from the irrigation of crops.

10. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.

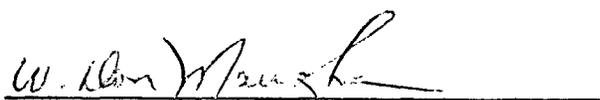
11. This permit is subject to the agreement dated July 13, 1976, and to any amendments thereof, between permittee and the United States Forest Service to the extent such agreement covers matters within the Board's jurisdiction.

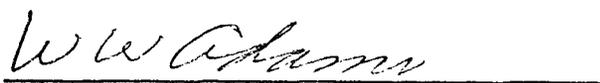
12. The applicant has complied with the California Environmental Quality Act of 1970 (CEQA) by finding that the project is exempt under the emergency project exemption of the CEQA Guidelines.

13. Pursuant to Section 2713(c), Title 23, California Administrative Code, the staff shall file a notice of exemption with the Secretary of the Resources Agency.

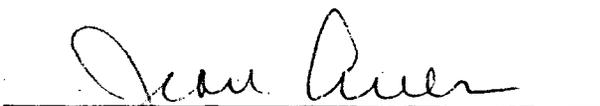
Dated: MAR 17 1977


John E. Bryson, Chairman


W. Don Maughan, Vice Chairman


W. W. Adams, Member


Roy E. Dodson, Member


Jean Auer, Member